

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARTEZ DEJUAN REYNOLDS,

Defendant-Appellant.

UNPUBLISHED

February 9, 2006

No. 257105

Wayne Circuit Court

LC No. 04-003182-01

Before: Cavanagh, P.J., and Cooper and Donofrio, JJ.

PER CURIAM.

Defendant Martez DeJuan Reynolds appeals as of right his jury trial convictions for second-degree murder,¹ felon in possession of a firearm,² and possession of a firearm during the commission of a felony.³ Defendant was sentenced to 30 to 50 years' imprisonment for the second-degree murder conviction, one to five years' imprisonment for the felon in possession of a firearm conviction, and to a consecutive term of two years' imprisonment for the felony-firearm conviction. We affirm.

I. Factual Background

Defendant's convictions arose from the shooting of James Winbush at approximately 11 a.m. on February 22, 2004. That morning, a group of men, including Mr. Winbush, defendant, and defendant's best friend, Harrison Humphries, gathered on the porch of an abandoned house on Annin Street in the city of Detroit to play a game of dice. At some point, Andre Harrell brought an additional pair of dice to Mr. Winbush. Mr. Harrell testified that he recognized several men on the porch, including the defendant and Mr. Humphries. Mr. Harrell did not remain at the game; he returned to his home, which was two houses away.

Shortly after Mr. Harrell left, defendant and Mr. Winbush began arguing over the dice game. Mr. Humphries testified that he attempted to stop this disagreement, but Mr. Winbush

¹ MCL 750.317.

² MCL 750.224f.

³ MCL 750.227b.

warned him not to interfere.⁴ Mr. Humphries subsequently decided to leave. As he walked toward the street, he heard approximately ten gunshots fired behind him. The men scattered, running away from the scene. Mr. Humphries stated that, as he ran away, the defendant ran in the same direction, ultimately passing him.⁵ Mr. Harrell testified that he heard six to eight gunshots while inside his house. He came outside and noticed everyone running away from the abandoned house. Mr. Harrell also noticed that defendant was holding a small, black handgun at that time. He further testified that he did not see any one else carrying a gun. Although Mr. Harrell did not contact the police or summon an ambulance,⁶ he waited with Mr. Winbush and administered CPR until help arrived. Mr. Winbush was pronounced dead upon arrival at the hospital. A subsequent autopsy revealed that he had been shot nine times.

While several witnesses were present during the shooting, no one who actually *saw* this incident volunteered any information to the police.⁷ When questioned by investigating officers on the scene, Mr. Harrell implicated both defendant and Mr. Humphries in the shooting. The following day, Mr. Humphries was taken into custody and questioned. He originally told the police that a fictional person named “T-Dot” shot Mr. Winbush. He later recanted his statement and implicated defendant in the shooting. Six days after the shooting, an unidentified man voluntarily came into Detroit’s 12th Precinct and provided information leading to defendant’s ultimate arrest. Although defendant later denied ever being on Annin Street, he asked the arresting officers if the charges arose from the murder at the dice game. On the witness stand, defendant asserted that he was with his girlfriend and her sister at the time of the shooting. He further claimed that he could not have run from the scene, as he had suffered severe leg injuries in a shooting seven months before the current incident. Defendant alleged that Mr. Humphries implicated him in the shooting because he was also a suspect in the investigation.

II. Sufficiency of the Evidence

Defendant challenges both the sufficiency of the evidence presented at his preliminary examination in support of his bindover for trial and at his subsequent trial in support of his ultimate convictions. Generally, we review a district court’s determination to bind a defendant over for trial for an abuse of discretion.⁸ As defendant failed to move to quash the information in the circuit court, our review would be limited to plain error affecting defendant’s substantial rights.⁹ However, as the prosecutor presented sufficient evidence at defendant’s subsequent trial

⁴ Mr. Humphries specifically denied that the dispute between Mr. Winbush and the defendant became physical.

⁵ Mr. Harrell testified that defendant and Mr. Humphries appeared to be running away together.

⁶ Mr. Harrell called Mr. Winbush’s sister, who, in turn, contacted the proper authorities.

⁷ The officers only located one other individual who participated in the dice game—Leonard Glover. The officers testified that Mr. Glover was nervous and reluctant to provide any information regarding the shooting. The prosecution was unable to locate Mr. Glover at the time of defendant’s trial and, therefore, he was not called as a witness in this case.

⁸ *People v Green*, 260 Mich App 392, 401; 677 NW2d 363 (2004).

⁹ *People v Noble*, 238 Mich App 647, 658; 608 NW2d 123 (1999), citing *People v Carines*, 460 (continued...)

to support his convictions for the charged offenses, any potential error would be deemed harmless.¹⁰ Accordingly, we need not review defendant's challenge on this ground.

In reviewing a defendant's claim that the prosecutor presented insufficient evidence to support his convictions at trial, we view the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt.¹¹ "[C]ircumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime."¹² In reviewing the defendant's challenge, we must defer to the jury's judgment regarding the credibility of the witnesses.¹³

Defendant first contends that the prosecutor failed to establish that he was the individual who shot Mr. Winbush. "The elements of second-degree murder are: (1) a death, (2) caused by an act of the defendant, (3) with malice, and (4) without justification or excuse."¹⁴ To establish that a defendant acted with malice, the prosecutor must show that the defendant possessed "the intent to kill, the intent to cause great bodily harm, or the intent to do an act in wanton and wilful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm."¹⁵ The prosecutor presented evidence that Mr. Winbush and defendant were arguing moments before the shooting. Defendant was seen running away from the abandoned house carrying a handgun. From this evidence, the jury could reasonably infer that defendant was the individual who shot Mr. Winbush.

In the alternative, defendant contends that the prosecutor presented insufficient evidence to establish that he acted with malice. Specifically, defendant contends that, if the jury believed that he shot Mr. Winbush, the evidence would only support a conviction for manslaughter. "Manslaughter is murder without malice."¹⁶ Murder may be mitigated to voluntary manslaughter when "the defendant killed in the heat of passion, the passion was caused by adequate provocation, and there was not a lapse of time during which a reasonable person could control his passion."¹⁷ It is not unreasonable that a jury could find that defendant acted with malice when he shot someone nine times following an argument regarding a dice game. Furthermore, defendant chose, for strategic reasons, to enter a blanket denial to the charges

(...continued)

Mich 750, 763; 597 NW2d 130 (1999).

¹⁰ *People v Hall*, 435 Mich 599; 460 NW2d 520 (1990); *People v Libbett*, 251 Mich App 353, 357; 650 NW2d 407 (2002).

¹¹ *People v Hunter*, 466 Mich 1, 6; 643 NW2d 218 (2002).

¹² *People v Lee*, 243 Mich App 163, 167-168; 622 NW2d 71 (2000).

¹³ *People v Lemmon*, 456 Mich 625, 642-643; 576 NW2d 129 (1998).

¹⁴ *People v Goecke*, 457 Mich 442, 463-464; 579 NW2d 868 (1998).

¹⁵ *Id.* at 464.

¹⁶ *People v Mendoza*, 468 Mich 527, 534; 664 NW2d 685 (2003).

¹⁷ *Id.* at 535.

against him, rather than pursuing a conviction for the lesser included offense of manslaughter.¹⁸ Counsel may not “sit back and harbor error to be used as an appellate parachute in the event of jury failure.”¹⁹

There was also sufficient evidence to support defendant’s conviction of felon in possession of a firearm. “[A] person convicted of a specified felony shall not possess [or] use . . . a firearm in this state” without first having the right to carry a firearm restored.²⁰ At trial, the parties entered the following stipulation into the record: “It is agreed between the parties that at the time of this incident that the defendant had been convicted of a felony and that he was not eligible to either carry or possess a firearm.” Defendant had, in fact, previously been convicted of a specified felony—carrying a concealed weapon in violation of MCL 750.227(2).²¹ The parties did not expressly stipulate that defendant was convicted of this specified felony. However, they did stipulate that defendant did not satisfy the statutory requirements to become eligible to carry a firearm. As the prosecutor presented sufficient evidence for the jury to find that defendant was carrying a handgun on February 22, 2004, the jury could further determine that defendant was a felon in possession.

Finally, we also reject defendant’s claim that there was insufficient evidence to support his conviction for felony-firearm. “The elements of felony-firearm are [, simply,] that the defendant possessed a firearm during the commission of, or the attempt to commit, a felony.”²² As we have determined that the prosecutor presented sufficient evidence for the jury to determine that defendant committed second-degree murder by fatally shooting Mr. Winbush, this claim also must fail.

III. Prosecutorial Misconduct

Defendant further contends that the prosecutor improperly forced him to comment on the credibility of the witnesses against him and argued facts not in the record. Prosecutorial misconduct claims are reviewed on a case-by-case basis, examining any remarks in context, to determine if the defendant received a fair and impartial trial.²³ Defense counsel did object to the prosecutor’s line of questioning during defendant’s cross-examination. However, as defense counsel failed to object during the prosecutor’s closing argument, our review of that challenge is limited to plain error affecting defendant’s substantial rights.²⁴

¹⁸ In fact, defendant never requested an instruction for that offense.

¹⁹ *People v Hardin*, 421 Mich 296, 322; 365 NW2d 101 (1984).

²⁰ MCL 750.224f(2); *People v Brown*, 249 Mich App 382, 383; 642 NW2d 382 (2002).

²¹ MCL 750.224f(6)(iii).

²² *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999).

²³ *People v Aldrich*, 246 Mich App 101, 110; 631 NW2d 67 (2001).

²⁴ *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

We agree that the prosecutor repeatedly and improperly asked defendant to comment on the credibility of the prosecution witnesses.²⁵ The prosecutor may not properly ask a defendant to comment on the credibility of another witness, as questions of witness credibility are matters for the trier of fact.²⁶ This inquiry was improper and the trial court sustained defense counsel's objection. However, in light of defendant's general denial of the evidence against him, this inquiry did not affect the outcome of his trial.

We also agree that, during closing argument, the prosecutor improperly argued certain facts that were not placed into evidence. A prosecutor enjoys wide latitude in fashioning arguments, but may only argue the evidence and all reasonable inferences arising from it.²⁷ Defendant challenges the following statement from the prosecutor's closing argument.

Now, if you listen to [defendant's] testimony everyone collectively have gotten together on a story to place him there. How can that be? The police talked to Andre Harrell or Blue, Leonard Glover, the neighbor Ronald Collins on the 22nd right after this happens. They all give police the information that it's, who are they're [sic] looking for, they're looking for Tez and who they think is his cousin, "H", 'cause they weren't sure what the relationship was between Tez and Harrison Humphries at the time. They all thought they were cousins. Turns out the were just best friends.

The prosecutor presented no evidence regarding the content of any statements made by Mr. Glover and Mr. Collins. Furthermore, although Mr. Harrell testified at defendant's preliminary examination that he believed that the defendant and Mr. Humphries were related, the prosecutor did not elicit this testimony at trial. The prosecutor also improperly mischaracterized defendant's testimony regarding his alibi defense. Defendant merely stated that he was with his girlfriend and her sister at the time of the shooting. Yet, the prosecutor argued that defendant failed to provide corroborating evidence that he took a cab to her house that day. However, none of these errors warrant reversal. Whether defendant and Mr. Humphries were best friends or cousins was not a material fact in this case. The trial court had previously sustained the defendant's objection when the prosecutor attempted to infer that Mr. Glover or Mr. Collins implicated him in the shooting. Moreover, had defendant objected to any of these arguments, a timely instruction could have cured any potential prejudice.²⁸

Defendant also challenges the prosecutor's argument that Detroit Police Officer Matthew Gnatek contacted homicide detectives and confirmed that they were "looking for [defendant]"

²⁵ The prosecutor repeatedly asked defendant whether Mr. Humphries was telling the truth when he implicated defendant in the shooting. She further inquired whether Mr. Humphries had any motive to falsely accuse defendant. The prosecutor also asked defendant if there was "any possible reason why" Mr. Humphries and Mr. Harrell would identify him as the shooter.

²⁶ *People v Buckey*, 424 Mich 1, 17; 378 NW2d 432 (1985).

²⁷ *People v Schutte*, 240 Mich App 713, 721; 613 NW2d 370 (2000).

²⁸ *Id.*

for a “murder on Annin.” However, this argument was supported by the record evidence. Officer Gnatek testified at trial that he contacted homicide to confirm the information provided by the unidentified tipster who volunteered information implicating defendant in the shooting. Although the substance of the officer’s conversation with the homicide detective was not placed into evidence, evidence had already been presented to the jury that defendant had been identified as a suspect in this case. The prosecutor was free to make this connection in her arguments.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Jessica R. Cooper

/s/ Pat M. Donofrio